

Office of The Independent Investigator

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William P. Callahan
Independent Investigator

February 17, 2009

Hon. Charles S. Haight, Jr.
Senior United States District Judge
Southern District of New York
500 Pearl Street, Room 1940
New York, NY 10007

Re: United States v. District Council of Carpenters
90 Civ. 5722 (CSH)
2008 Year End Report

Dear Judge Haight:

Pursuant to our discussions with the Court throughout our tenure, the attached 2008 Year End Report is written with the expectation that it will be made a public document, and provides some detail of our work during 2008. In adjudicated matters we have utilized the names of those involved and we have referred to "member" or "employer" in matters which are pending investigation or adjudication. As is our custom, a separate communication titled Active Major Cases, (Confidential, Not for Public Disclosure), is provided as an update on current matters under investigation.

If the Court has any questions on this report, please feel free to contact the undersigned.

Respectfully submitted,



William P. Callahan
Independent Investigator

cc: Benjamin Torrance, AUSA, SDNY
Krisitn Vassalo, AUSA, SDNY
Gary Silverman, Esq

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(United States v. District Council of Carpenters, 90 Civ. 5722 (CSH))

2008 Year End Report

As 2009 begins, the Independent Investigator reports that the New York District Council of Carpenters completed the implementation of an initiative approved during the November 2007 Special By-law meeting of the Delegates, to effect change in several important provisions of the job-referral rules and District Council policy.

- *The Trade Show job referral list was successfully merged into the District Council Out of Work List.*

This remedied several previously reported concerns surrounding the method of dispatching workers and stewards to trade show job sites including the Javits Center.

- *A steward dispatched from the OWL must begin working for the company they are dispatched to for at least the day following the dispatch.*

This one act puts an end to the perception that some jobs for favored shop stewards are being "warehoused."

- *An acting steward can be dispatched from the OWL and can remain on the jobsite for up to five days after which the Business Representative must notify the District Council and request that a certified shop steward be dispatched.*

It is always preferred that a certified shop steward be on each job-site. We recognize some shop steward positions are hard to fill, such as busy times for Millwrights and from time in other crafts. Thus a provision for dispatching or appointing an acting shop steward temporarily is essential until such time as a certified shop steward can be dispatched. This change in policy serves as an instruction to Business representatives.

- *The establishment of a Shop Steward Review Panel as a sub-committee of the Executive Committee of the District Council.*

The establishment of a Shop Steward Review Panel provides the necessary controls to standardize shop steward job performance throughout the District Council on many matters of importance. The Shop Steward Review Board has an array of remedial tools available to apply ranging from suspension of steward skill to retraining.

- *A company refusing to sign a shop steward report should be grieved by bringing charges against the foreman who refused to sign.*

This became an issue during our tenure as the District Council and the II became aware that companies were refusing to allow their representatives to sign the shop steward report.

- *Members are required to keep current their skill certifications especially those that require renewal.*

Each week between ten and twenty skill certifications are reviewed by the II and the District Council. As part of the II's presentation during training sessions for shop stewards we teach the importance of keeping skills current and how increasing skill sets provide for more employment opportunities.

- *On January 1, 2009 the (8) hour Re-Certification & Skill set was implemented for all dispatches that require a Shop Steward on the jobsite, and three additional certified skills were added to the OWL skill sets available to carpenters.*

For those Shop Stewards who have not acquired the necessary recertification and enhanced skill set, they would be dispatched when there are no members available with that skill. We believe that the negative comments bantered about concerning the carpenters on the OWL are most successfully countered by the quality of shop stewards dispatched.

These changes were among a series of initiatives undertaken by the District Council in 2008, endorsed by the Anti-Corruption Committee and supported by the Independent Investigator. These improvements to the job referral rules were handled seamlessly by the District Council and as always implemented by the dedicated staff of the Out of Work List. We are certainly pleased with the assimilation of the trade show out of work list into the Carpenter's Out of Work List and the increased opportunities available in this facet of the industry for certified shop stewards and those carpenters who have added the trade show and exhibition skill. We are still focused on an exhibition company that has decided to hire seemingly ill-equipped workers who have not acquired the significant course of training they require from workers dispatched to their sites. This is a matter under investigation by the II and the Anti-Corruption Committee.

Another major change implemented during 2008 by the District Council was the completion of the planning, purchase of equipment and staff training that paved the way for the issuance of the photographic identification card for all members. The union membership card now acts as a true identification card with a photograph of the member imposed on the card when dues are paid. The implementation of this photographic identification card was received well by the membership. The only initial glitch we saw were that the first cards issued did not have the Hotline phone number on the back of the card. The District Council identified and quickly corrected that omission. Again the staff of the local unions and the District Council employees involved in the planning and implementation should be commended. This is a true accomplishment and protects against some of the fraudulent uses of membership cards we saw in the past.

Investigative Plans and Job-Site Visits

Throughout the year job site visitations by Business Agents to companies the Anti-Corruption Committee determined needed vigilance increased. The Investigative Plan (IP) program has been most successful for all involved. The District Council Executive Officers and the agents in the field supported this initiative in 2008 which increased job-site visitations for job sites operated by companies the Anti-Corruption Committee determined needed increased vigilance. We found as the process matured that several of the companies that the ACC placed on the IP plans resulted from requests to the ACC from Business Agents. These frequent visitations by the Business Agents often during off-hours and weekends send a strong signal of support for the job site steward; insures compliance by the signatory company of the CBA, job referral rules and safety issues. Most importantly these business representative visitations give thousands of union carpenters who meet their BAs during these job site visitations a visible sign of their union's support.

The Independent Investigator brought on board a full-time analyst to support the field work and review the Business Agent visitation reports. Our analyst compares them to the shop steward reports and prepares an analysis for the Anti-Corruption Committee to review. This review takes place during the weekly Anti-Corruption Committee meeting. At any one time about ten companies are on the Investigative Plan, whose frequency of job site visitations are scaled by input from the field and the ACC.

The unannounced job site visits by the Independent Investigator staff continued during 2008. Our visits are intelligence driven from our Hotline and investigations. I personally have found the job site visits extremely rewarding and feedback indicates they have a salutary effect among the carpenters working at a particular site. The quality of our job site visits improved as they have become driven by the intelligence we have received from the field over the Hotline. As an example, one Friday evening in June after receiving a very specific Hotline call, we found furniture delivered at City

offices with a union carpenter acting in a supervisory capacity. At our request, The OWL dispatched two workers the next day; the ACC interviewed all concerned and we have taken on an additional investigation that is still on going. We also followed up with a request of the City of New York Department of Investigations for bids let by a City agency for office furniture during 2007-2008.

Recently the II investigated several calls to the Hotline during a short period concerning non-union immigrant workers installing wood floors at a Brooklyn condominium construction site. Despite numerous job site visits and grievances filed by the local business representatives the company outsourced covered work to a non-union entity over several weekends. The II and another investigator visited the site on a Saturday morning and found non-union immigrant workers installing wood flooring while other union carpenters worked on the site. At a recent grievance proceeding which was initiated by the business representative, the contractor admitted hiring these workers and expects he will have to pay for the lost wages and benefits due. There was no doubt that the business representatives were on top of this matter before the II's site visit and the grievance was promptly filed on the worker's behalf. However, our presence that morning in Brooklyn signaled a message of additional support.

Access to many job sites with the enhanced security concerns of New York have made some work areas inaccessible to the business representatives; we have had success with building security officers by pointing out our federal court-appointed powers of job site anti-corruption. During the Brooklyn condominium Saturday visit, the site security utilized hand held radios to radio ahead our entry onto the premises by saying "An inspector is on his way up." We do note that areas with the highest security clearances for workers such as the United States Mission to the United Nations have gone out of their way to allow access for our staff to meet members and stewards.

Our Subpoena Power

A powerful tool available to the Independent Investigator is our subpoena power upon request to the court. As the court knows, our applications for a subpoena contain a detailed Declaration laying out a reasoned statement of the facts to support our request for records or testimony. In each of these subpoena requests offered to the court in 2008, the Declarations were vetted by the United States Attorney's office. Under our Order, the Independent Investigator has assisted the Union in uncovering accounts and identifying schemes utilized by employers to pay off the books workers for carpentry work.

Furniture installation, a facet of the covered work in the domain of the carpenters union, consumed a significant amount of our investigative hours in 2008. Several signatory employers and alleged "alter ego" companies were subpoenaed on application to the court. Along with the District Council investigators scores of

members involved in furniture installation were interviewed. We are continuing our efforts to police this aspect of the carpentry trade.

The Hotline

Throughout the year calls to our Hotline telephone ranged from 70 to over 100 calls each month. This compares favorably to the well-established 800-Call-IRB hotline utilized by the multi-million member Teamster Union which reports about 85 calls a month. In fact the Carpenter Union hotline number has become a ubiquitous sticker hanging in the many job shanties around town like a life preserver on a pier. There to be used if necessary. Anonymity is assured all. We have implemented several controls which increase secrecy and anonymity. And we continue our promise to fairly investigate each call we turn into a case. The over-riding principle in our investigations is that everyone involved deserves a good investigation. From these calls and other referrals during 2008, the II's Office opened 339 investigations. At any one time throughout the year we have about 100 matters opened as active investigations. We had been providing the Court and the Parties a list of our major investigations which we will continue to provide from time to time throughout 2009.

This past year an interesting anomaly occurred as several calls related to LIUNA, Teamster and other construction trades were fielded by our intake personnel as their members utilized the Hotline. We developed a policy with the Anti-Corruption Committee to refer matters to unions that were under court -supervision by the II and to utilize the office of Director of Operations Maurice Leary to intervene with other unions including several carpenter unions in other jurisdictions. We referred two matters to a Teamster local Monitor out of a hotline call that resulted from an investigation we were undertaking of non-union workers delivering and possibly installing furniture. The Monitor, John Scala found that this company had only covered its two principal employees since it became a signatory with the Teamsters and had no benefits paid ever for the helpers and truck drivers. He was successful and assisted our efforts when several of their potential members admitted carrying a Teamster card to the job site to avoid problems with other trades. We also enjoyed an excellent relationship with the School Construction Authority's Inspector General as several matters emanating from the Hotline were referred to that office and we began an exchange of ideas that were of mutual assistance.

District Council's Anti-Corruption Committee

So often we choose to investigate a matter with the Anti-Corruption Committee and one of the most useful tools available to us in this type of collaboration is the

opportunity to interview members along with Scott Danielson, who acts as a District Council investigator. As a result of this the anti-corruption effort during our tenure we have personally reached almost 1000 members who have been interviewed in conjunction with the District Council. Normally, signed, sworn, notarized statements record the interviews, which are conducted at the District Council.

As a result of one of our joint ACC investigations into a complaint concerning a signatory wood flooring company installing hardwood floors in public schools, the District Council has tasked newly aligned Local 2870 with organizing "floor sanders." While no one expects hundreds of new members to come into this craft it is important to capture this kind of wood-work for the membership. While on the topic of Local 2870, we look forward to seeing the implementation of job referral rules; and the presence of certified stewards at their sites.

There are many important matters actively under investigation by the Independent Investigator and the Anti-Corruption Committee. By way of example an especially serious allegation was called into the Hotline last year concerning union memberships being sold. My investigators along with officials serving as District Council investigators conducted interviews, obtained signed, sworn statements; reviewed documents and thoroughly vetted this allegation. Our joint investigation into this serious matter will be completed shortly, and we will keep the Court advised.

Our Order allows for investigation of matters that defraud the Benefit Funds. The II has subpoenaed corporate and banking records from several entities to combat "double-breasting" schemes which not only circumvents corporate responsibility under the various collective bargaining agreements, but violates federal ERISA laws. And we have worked responsibly with the teams of forensic auditors the Funds currently utilized to combat fraud.

While we have referred several matters to law enforcement for investigation, the single forum in which our efforts are brought forward for a remedy has been the judicial process available under the UBC constitution. The New York City District Council of Carpenters has a deeply docketed Trial Committee. This board is comprised of experienced union carpenters and prosecution is initiated by an aggrieved member. For our purposes, the prosecution is either led by the area business representative or Scott Danielson. The charged member has the right to face his accuser and has some access to discovery. Only members may be in the room during a disciplinary hearing. Which means attorneys and non-union witnesses must wait outside the room. This includes the II and my staff.

During 2007-2008 the Trial Board expelled 126 members and the District Council collected over \$262,000 USC in fines. One of my investigators had significant experience during his career as an FBI agent with oversight operations of other unions

under court-supervision. He knows of no union that utilizes a Trial Committee consisting solely of union members to the extent of the New York City District Council.

I would like to take this time to commend the diligence and dedication of OWL Supervisor Scott Danielson, who serves as a union representative on the Anti-Corruption Committee; performs most of the liaison with our office and has worked tirelessly in planning and implementing most of the changes. Likewise Maurice Leary, Director of Operations and union representative to the Anti-Corruption Committee; serves as the **liaison with the business representatives, Executive Officers and the membership. It was Leary who clearly embraced and first** advocated much of what has been implemented to the Executive Officers and membership. My investigators appreciate the dedicated service to the Anti-Corruption Committee of District Council Investigator Mike Murphy, who often accompanies my staff on job site investigations. One of the most important advocates for union members at the Anti-Corruption meeting is attorney, Gary Silverman, Esq. who understands in a precise way the mission of the committee; the importance of upholding the consent decree and the democratic principles that drive this union. We also have a great deal of respect for the audit teams that so diligently work in the background to insure compliance with the responsibilities of employers to the ERISA funds and furthers the mission of the Anti-Corruption Committee.

Supervision of Local 157

Throughout most of 2008, Local 157 operated under the Supervision of General President Mc Carron's representatives, Supervisor Frank Spencer and Assistant Supervisor (EST) Michael Forde. This needed remedial action provided under the UBC Constitution was based in part on an investigation initiated by the Independent Investigator and reported to the Executive Officers of the District Council. The Independent Investigator commends the District Council executives all of whom worked diligently throughout the year to support the work of Supervisor Frank Spencer and Assistant Supervisor Michael Forde by providing staff and support to their mission. We do note that there was an immediate increase in shop steward referrals and work site visitations by the many district council employees detailed as acting business agents to Local 157 after the imposition of the supervision. Today Local 157 has been returned to the membership; shop stewards are appointed in a timely manner to jobs; business representatives are visiting job sites frequently and job-referral rules are being enforced. Most importantly, members have daily access to their business representatives. Those representatives have been especially diligent in responding to frequent requests for information by our Office and the Anti-Corruption Committee.

The Anti-Corruption Committee was the venue the Independent Investigator chose to initially provide the evidence in the Local 157 investigation. This information escalated quickly to the Executive Officers and eventually General President McCarron,

all of which built up to the decision to impose supervision over the affairs of Local 157; and additionally lead to the retirements of business representatives William Hanley and Fred Kennedy; the removal of Business Agent George DiLacio and other temporary acts of remediation and rehabilitation. The collaboration between the District Council and the Independent Investigator via the Anti-Corruption Committee provided ready access to the many records maintained by the Council, obtained and reviewed by the Independent Investigator and utilized as evidence during the UBC hearings regarding the Supervision.

As the Court is aware, former Business Agent George DiLacio brought a civil law suit naming me as a defendant arising from the lawful actions I took as the Independent Investigator in the Local 157 matter that resulted in his employment termination. I note and appreciate that the United States Attorney's Office, through Assistant United States Attorney Benjamin Torrance and Kristin Vassallo joined my counsel, Charles Stillman and Erik Zissu in addressing the immunity issue raised on my behalf and upheld by your Opinion.

Additional Efforts Implemented to Assist Shop Stewards

The II notes that the District Council initiated and implemented other important changes this past year many of which were first discussed during the ACC meetings. We certainly credit the Executive Officers of the District Council for recognizing the need for a Shop Steward Review Committee which is a sub-committee of the Executive Delegates. This needed committee counsels, disciplines and performs the necessary oversight so that stewards have a better handle as they go about doing their jobs as the "eyes and ears" of the District Council at the work-site and certainly, the planning and the implementation of the new shop steward forms by the District Council this year are significant achievements. A remarks section permanently captures important job-related information. No one record insures proper controls for the implementation of job referral fairness and disputed pay and benefit issues more than the steward reports.

The District Council conducts a vigorous recertification process for shop stewards and the ACC provides instructors from the Independent Investigators office, and the OWL staff. Stewards are instructed in the operation of the Anti-Corruption Hotline, the status of their job as the first line of fiduciary responsibility under ERISA; the importance of being vigilant for corrupt practices and issues such as job skill certifications and defending the job-referral system. They are also instructed in the importance of their record keeping and utilizing the new shop steward sheets. The prosecution and conviction of carpenter stewards Annucci and Proscia is discussed as a life changing lesson, and serves to underscore for each of the stewards their responsibility under the law. My two investigators believe that these classes are some of the most important times they spend directly with members as they have gotten our message to hundreds of potential shop stewards.

Pursuant to provisions of the Consent Decree the District Council forwards about 20 skill certifications a week to our office. These certifications insure that the proper worker or steward is dispatched to a job from the OWL. We continue to speak to the responsibility of all members to keep their skills current and for business representatives to police the requested skills for all members.

As with any court appointed officer it is necessary to work with the incumbent leadership of the union. During this past year the Executive Officers of the District Council have been instrumental in the successes the Anti-Corruption program has enjoyed. The Independent Investigator points out their actions during the special by-law meeting of the Delegates that set the stage for the job referral changes in 2008; their support of the supervision of Local 157; and the implementation of the photographic identification card for all members.

Anti-Corruption Committee and the Independent Investigator Combating Racketeering

As part of our efforts to combat racketeering influences which have a potential to attack the New York City District Council of Carpenters, it is necessary to keep abreast of pending prosecutions which bear upon our mission. Below are some representative matters adjudicated by the courts in 2008:

- Testwell Labs were the subject of an Indictment by the Manhattan District Attorney Office for fabricating concrete test results. As a part of its overall materials testing business, Testwell is a signatory contractor with the District Council. My staff was assured that those drillers that are members of Local 1536 are not implicated; nor were they part of the various schemes charged. We interviewed several members with the District Council during the beginning of 2008.
- Michael Annucci, an executive delegate of the District Council and Frank Proscia, both carpenter union stewards were sentenced to federal prison terms for leaving union carpenters off their shop steward reports thus aiding and abetting their employer in a scheme to defraud the benefit funds and deprived union carpenters their just wages and benefits. As a result of their conviction both members are barred under the consent decree. Additionally the union has charged each with violating the UBC Constitution and By laws for their failure to properly insure that all carpenters at the work site they monitored as shop stewards were on their steward reports and received their fair wages and benefits. A trial committee heard the facts in the cases and rendered a judgment that they were guilty of their charges, levied a fine and expelled them from the union. As provided in the UBC constitution, both retain their right to appeal that

decision. (Mr. Proscia has begun the appeal process available under the UBC constitution.) The union's assistance to the Federal prosecutions was noted by the prosecution.

- July 2008 contractors Patrick Noel McCaul and James Dermott McGonnell were sentenced in U.S. District Court, SDNY to 5 years imprisonment for defrauding the Carpenters benefit funds. A \$1.5 million forfeiture was ordered as a form of restitution to the funds, and a 2 year supervised release was added to the sentence.
- A former union steward Benny Rivera pleaded in U.S. District Court, SDNY to aiding and abetting his employer in a scheme to defraud the ERISA plans of the union by leaving union carpenters off the shop steward reports. He will be sentenced by the Court in late February 2009. A District Council trial committee heard the evidence against Rivera and expelled him.
- James Murray, the owner of On Par Construction, was taken into custody as he returned to the United States from Ireland where he fled after being charged in a Federal criminal indictment which includes a significant forfeiture count in which the District Council benefit funds should be funded several million dollars from the victimization of the membership as alleged in the Indictment. Two other carpenter union stewards were charged in Federal court during 2008 for their fraudulent activity while employed on job sites operated by Murray.
- Greg DePetro, a union contractor pleaded guilty and was sentenced in the Eastern District of New York for his role in a money laundering scheme. During his allocution to these charges he stated under oath that the proceeds were used in part to pay union members cash for overtime and weekend work and served as a means to avoid paying their benefits. We obtained the schedule of exhibits from the prosecution team and provided a series of checks to the Funds and union to review for recovery of funds fraudulently converted. Mr. DePetro is not a member of the UBC. His company, New York City Acoustics (a signatory contractor) continues to employ union carpenters. After an audit and investigation, the ACC referred a series of UBC constitution and By law violations against over 40 union carpenters employed by New York City Acoustics to the Trial Committee.
- The union has recently charged a member under the UBC Constitution and By laws with violation of the Consent Decree for pleading to a racketeering predicate while a member. The Independent Investigator and the Anti-Corruption Committee have examined the court proceedings of several signatory company

owners who entered guilty pleas to ERISA violations in what is known as the Operating Engineer case to see if there are any ramifications for the District Council.

A former member and one time shop steward, Brian Dono, was expelled from the union in 2008 after he was charged in Federal court in a Racketeering case emanating from a series of kidnappings and home invasions that benefitted organized crime. None of the charges Brian Dono face have anything to do with the carpenters union, but the union should be commended for facing its responsibility to the membership and the Consent Decree for charging Dono under the UBC Constitution and their willingness to apply the District Council By Laws in the pending matter for the violation of the Consent Decree described above.

Along with the Parties, (the District Council and the United States Attorney's Office) the Independent Investigator participated in a conference call hearing concerning an assault of a member running for an elected position in Local 608 after a meet the candidates' night. The II's staff assisted the Department of Labor Office of Labor Management Standards (OLMS) investigators with many of the interviews. In compliance with the instructions of the Court our Office provided support and assistance, but the overall investigation and reporting responsibilities rested with OLMS.

The Anti-Corruption Committee frequently requests forensic audits of companies that we suspect of fraudulent activity such as double-breasting, failure to pay correct wages and ERISA benefits. The Funds and District Council have in their employ capable auditors and on several important matters retain the services of former IRS criminal division special agents for these more intensive forensic audits.

In a forward looking matter in 2009, the Executive Officers of the District Council plan to require shop stewards to certify they are in compliance with the LMRDA and ERISA provisions that prohibit certain barred individuals from holding office or union employment. We certainly support that initiative of the District Council.

Conclusion


I cannot conclude my report without speaking to the severe economic climate change we now endure. One employer of union workers began bouncing checks as the holiday season approached; President Thomassen and the District Council worked with the employer to have the members paid but eventually had to place the company, which often employed about 80-150 union carpenters a day, on the "shut down" list. The union believes that 150 workers were directly affected to varying degrees and have set up several nights where fund employees and union representatives are available to assist these members claim their lost wages and benefits

As I look back to August 2008 union members were working and shop stewards had little time on the OWL as they were dispatched quickly off the list to jobs according to OWL Supervisor Scott Danielson. Yet as we begin 2009, the pool of workers on the OWL has gotten much deeper at times between 2000 and 4000. Of course many of these carpenters have been requested and remain on the list for their 25 days, but the number of union carpenters out of work is a large number. Hopefully there is some light as major infrastructure projects develop in the Bronx; landmark Port Authority projects continue in Manhattan and Queens and school construction and renovations come on board in all the boroughs and roads, bridges and tunnels construction stand to gain by the new Stimulus Bill.

Another serious concern is the development of a new pool of workers willing to work for far less wages than even legitimate, non-union tradesmen. During the course of the year, Director of Organizing Ed McWilliams informed us that labor brokers are willing to "fly workers up from Florida," an euphemism for providing immigrant workers, house them, feed them and accept the equivalent of what one union carpenter receives in an hour with pay and benefits for a day's work. The morally reprehensible intrusion into the competition for work that an emerging "peasant-class" work force poses as it creeps from the shadows and boldly enters commercial construction is a matter of grave concern, and certainly unfairly competes with willing union carpenters. Especially those carpenters now out of work because of the economic conditions.

I would like to thank the Court for its continued support of my tenure. We will continue to try keep the Parties informed of our work as best as possible.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'William P. Callahan', is written over a horizontal line.

William P Callahan

Independent Investigator

cc: Benjamin Torrance, AUSA, SDNY
Kristin L. Vassalo, AUSA, SDNY
Gary Silverman, Esq.